

ST: Nonademption of Specific Devises.

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE NONADEMPTION OF SPECIFIC DEVICES IN CERTAIN  
CASES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 7 of Chapter 31 of the General Statutes is amended by adding a  
new section to read:

**"§ 31-42.3. Nonademption of specific devises; unpaid proceeds of sale, condemnation, or  
insurance; sale by conservator, guardian, or attorney-in-fact.**

(a) In the absence of a finding of a contrary intention in the testator's will, this section  
controls the construction of a will where the property of a testator would be adeemed but for this  
section.

(b) A specific devisee has a right to specifically devised property in the testator's  
estate at the testator's death and to any of the following as applicable:

(1) Any balance of the purchase price, together with any security agreement,  
owed by a purchaser at the testator's death by reason of sale of the  
property.

(2) Any amount of a condemnation award for the taking of the property  
unpaid at death.

(3) Any proceeds unpaid at death on fire or casualty insurance on or other  
recovery for injury to the property.

1           (4)    Any property owned by the testator at death and acquired as a result of  
2                   foreclosure, or obtained in lieu of foreclosure, of the security interest for a  
3                   specifically devised obligation.

4           (5)    Any real property or tangible personal property owned by the testator at  
5                   death which the testator acquired as a replacement for specifically devised  
6                   real property or tangible personal property to the extent it is established by  
7                   clear and convincing evidence that the property was acquired by the  
8                   testator as a replacement for the specifically devised property.

9           (6)    If not covered by subdivisions (1) through (5) of this subsection, a  
10                  pecuniary devise equal to the value as of its date of disposition of other  
11                  specifically devised property disposed of during the testator's lifetime but  
12                  only to the extent it is established by clear and convincing evidence that  
13                  ademption would be inconsistent with the testator's manifested plan of  
14                  distribution or that at the time the will was made, the date of disposition or  
15                  otherwise, the testator did not intend ademption of the devise.

16           (c)    If specifically devised property is sold or mortgaged by a conservator or guardian  
17                  or by an attorney-in-fact acting within the authority of a durable power of attorney for an  
18                  incapacitated or mentally incompetent principal, or a condemnation award, insurance proceeds,  
19                  or recovery for injury to the property is paid to a conservator or guardian or to an attorney-in-fact  
20                  acting within the authority of a durable power of attorney for an incapacitated or mentally  
21                  incompetent principal, the specific devisee has the right to a general pecuniary devise equal to  
22                  the net sale price, the amount of the unpaid loan, the condemnation award, the insurance  
23                  proceeds, or the recovery.

(d) The right of a specific devisee under subsection (c) of this section is reduced by any right the devisee has under subsection (b) of this section.

(e) For the purposes of the references in subsection (c) of this section to a conservator or guardian, subsection (c) of this section does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity or mental incompetence ceased and the testator survived the adjudication for at least one year.

(f) For the purposes of the references in subsection (c) of this section to an attorney-in-fact acting within the authority of a durable power of attorney for an incapacitated or mentally incompetent principal, all of the following apply:

(1) Adjudication of incapacity or mental incompetence before death is not necessary.

(2) The acts of an attorney-in-fact within the authority of a durable power of attorney are presumed to be for an incapacitated or mentally incompetent principal."

**SECTION 2.** The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comment to Section 2-606 of the Uniform Probate Code and all explanatory comments of the drafters of this act, as the Revisor may deem appropriate.

**SECTION 3.** This act becomes effective January 1, 2018, and applies to estates of decedents dying on or after that date.